

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
Northern Division

DR. ROBERT J. WALKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2:06-cv-00049-ID-SRW
	)	
H. COUNCILL TRENHOLM STATE	)	
TECHNICAL COLLEGE, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS  
AND ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

Plaintiff hereby responds as follows to the Motion to Dismiss or for More Definite Statement, filed by the defendants H. Councill Trenholm State Technical College ("Trenholm"), the Alabama Department of Postsecondary Education ("Department"), Molina and Johnson.

At the outset, Plaintiff notes that Defendants do not even attempt to offer any reason why Count I, brought against Trenholm for religious discrimination under Title VII, should be dismissed. In addition, Plaintiff responds to Defendants' contentions as follows.

a) Regarding paragraphs 1, 2 and 4 of Defendants' submission, Defendants are correct that Trenholm State and the Department are not subject to suit under § 1983. Plaintiff is not suing them under § 1983. However, contrary to Defendants'

contention (paragraph 4), Molina and Johnson *are* subject to suit in their official capacity under § 1983 for prospective equitable relief. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10, 109 S.Ct. 2304, 2312 n.10 (1989); they can be sued for prospective equitable relief, including instatement to the position to which Plaintiff is entitled. *See, e.g., Cross v. Ala Dep't of Mental Health*, 49 F.3d 1490, 1503 (Ala. 1995). Plaintiff seeks such relief against them under Counts II and III.

b) Defendants' contention (paragraph 3) about the availability of punitive damages, is not a "motion to dismiss" argument, but instead an extremely premature argument about jury instructions.

c) Defendants' contentions in paragraphs 5 and 6, about "respondeat superior" and negligence as the basis for § 1983 liability, are not proper motion-to-dismiss arguments in this case. Defendants do not contend that the Complaint's allegations against Molina and Johnson are exclusively based on a theory of "respondeat superior" – instead Defendants just seek a ruling about the law "to the extent that" Plaintiff *might* be relying on those theories. This argument affords no basis for dismissal.

d) Defendants argue (paragraph 8) that the claims against the Department and Johnson should be dismissed because they were not named in Plaintiff's EEOC charge. This obviously affords no basis for dismissing Counts Two and Three,

which are not Title VII counts. As to Count One, the Title VII Count, that Count is brought against Trenholm as stated in the Complaint.

e) Defendants' contentions in paragraphs 7, 9, 10 and 11 are requests for more definite statements and specific details regarding the specific acts, omissions and constitutional violations alleged by Plaintiff. While Plaintiff does not agree with Defendants' arguments in these paragraphs, Plaintiff is not opposed to amending his Complaint to provide more details of the acts and omissions giving rise to the constitutional violations committed by Defendants as requested in their Motion. Should this Court conclude that the Defendants are correct in their requests for more specific information, Plaintiffs respectfully requests additional time to file an Amended Complaint in this matter pursuant to Rule 15(a) Fed.R.Civ.P. In addition, Plaintiff is not opposed to amending his Complaint to clearly reflect the positions set out in his response above and to cure any perceived deficiencies.

Based upon the above, Plaintiff respectfully requests that this Court deny Defendants' Motion to Dismiss, or in the alternative allow Plaintiff to Amend his Complaint.

Respectfully submitted,

/s/ Candis A. McGowan

Candis A. McGowan (ASB-9358-036C)

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of April 2006, I served a copy of the above and foregoing upon the following attorneys by electronically filing the same with the CM/ECF system, which will send electronic notice of same to:

Margaret L. Fleming  
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/s/ Candis A. McGowan

Of Counsel